Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Petition of City of Richardson, Texas	)	
	)	

To: The Commission

PETITION FOR RECONSIDERATION

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TABLE OF CONTENTS

SUMMARY

Cingular Wireless LLC ("Cingular") hereby seeks reconsideration of the Commission's decision to amend Section 20.18(j) to "clarify" its meaning. The amendment does not simply clarify the old rule, but actually results in an unacknowledged, substantive rule change adopted in violation of the Administrative Procedure Act ("APA") and the FCC's own rules.

The rule was initially adopted as part of the original wireless E911 rules and states that a wireless carrier must begin Phase II E911 deployment only after receiving a request from a PSAP that "*is capable* of receiving and utilizing the data elements associated with the service." At the time of adoption and in subsequent decisions, the Commission expressly stated that the purpose of this condition was to ensure that a carrier's E911 obligations were not triggered until: "a PSAP . . . has made the investment which is necessary to allow it to receive and utilize the data elements associated with the service." The Commission further clarified that, at the time of request, "[t]he PSAPs *must use* switches, protocols, and signaling systems that will allow them to obtain the calling party's number from the transmission of ANI." Thus, the FCC clarified that "is capable" means "is able."

In response to a Petition by the City of Richardson, the Wireless Telecommunications Bureau ("Bureau") sought comment on the need to clarify that the rule does not require PSAPs to be able to utilize Phase II information at the time they request such information. Cingular objected to this clarification and several parties noted that the requested clarification would violate the APA by substantively changing the rule without proper notice of the change. Despite these concerns, the Commission added language to Section 20.18(j) indicating that a carrier's deployment obligation is triggered if a PSAP *may be capable* of utilizing the service within six months of a request.

The Commission's decision is arbitrary and capricious and violative of both the APA and the FCC's rules for the following reasons:

- The *Public Notice* issued by the Bureau did not indicate that a substantial rule change was being considered;
- The *Public Notice* does not constitute a Notice of Proposed Rulemaking because, among other things, the Bureau does not have the authority to issue such notices;
- The Commission failed to explain the need for the rule change and never even acknowledged the substantive change; and
- The rule, as amended, is internally inconsistent and violative of the original stated basis, which the FCC retained.

Thus, the Commission must vacate the *Order*.

The only clarifications necessary under the original rule relate to mechanics and dispute resolution procedures. Cingular urges the Commission to adopt a new Order (i) requiring PSAPs to submit documentation with their requests establishing that they are able to receive and utilize the requested information; (ii) establishing an expedited process for resolving disputes; (iii) tolling the six month period for responding to a disputed PSAP request; and (iv) determining whether the Bureau has delegated authority to issue rulemaking notices.

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To: The Commission

PETITION FOR RECONSIDERATION

Cingular Wireless LLC ("Cingular"), on behalf of its subsidiaries and affiliates, hereby requests reconsideration of the Commission's *Order* which purports merely to clarify the "is capable" condition that must be satisfied before a PSAP's request for Phase II E911 service is deemed valid. Although the Commission retained both the "is capable" language and the underlying purpose of the rule – to prevent wireless carriers from expending resources for E911 implementation before a PSAP is actually able to use the information -- it added "clarifying" sentences that substantively change Section 20.18(j). Specifically, the new language transforms the requirement that a PSAP be capable of utilizing Phase II location information at the time it requests such information from a wireless carrier into a requirement that the PSAP merely demonstrate that it *may* be capable of utilizing the information within six months.[1] Thus, the new rule is both internally inconsistent and in conflict with its underlying purpose and must be vacated as inconsistent with the Administrative Procedure Act ("APA") and longstanding case

[1] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas,* CC Docket No. 94-102, *Order*, FCC 01-293 (rel. Oct. 17, 2001) ("*Order*").

law. On reconsideration, the Commission also should clarify the dispute resolution process and other procedural issues.

BACKGROUND

In 1996, the Commission adopted rules requiring covered CMRS carriers to provide location information for 911 calls.[2] These rules were largely based upon a Consensus Agreement submitted by CTIA, NENA, APCO, and NASNA.[3] This agreement established that a PSAP must be ready to use E911 data before a carrier's obligation to begin deploying E911 service is triggered.[4] In fact, the parties to the Consensus Agreement submitted comments clarifying that a PSAP request for E911 service would not be valid, or *bona fide*, unless the PSAP was able to utilize the requested information at the time of the request.[5]

This fundamental principle of the consensus agreement was codified in Section 20.18(f) of the Commission's E911 rules, which stated that the E911 requirements apply only if:

> the administrator of the designated Public Safety Answering Point has requested the services . . . and *is capable* of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the costs of the enhanced 911 service is in place.[6]

The Commission went to great lengths to make clear that covered carriers were not required to expend limited resources on E911 deployment until PSAPs began using the infrastructure

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[2] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 18676 (1996) ("*First Report*").

[3] *Id.* at 18687-89, 18708-12.

[4] Joint Reply Comments of the Cellular Telecommunications Industry Association, the National Emergency Number Association, the Association of Public-Safety Communications Officials, and the National Association of State Nine One One Administrators, CC Docket No. 94-102, at 3-5 (Mar. 11, 1996) ("Joint Reply Comments").

[5] *Id.* at 5.

[6] 47 C.F.R. § 20.18(f) (1996) (emphasis added); *see First Report*, 11 FCC Rcd. at 18768.

necessary to use E911 information. In the *First Report*, the Commission stated that a covered carrier's E911 obligations were not triggered until:

> [the] carrier receives a request for E911 service from the administrator of a PSAP *that has made the investment which is necessary to allow it to receive and utilize the data elements associated with the service*,* LEC infrastructure will support the service, and a cost recovery mechanism is in place.
>
> ---
>
> *The PSAPs *must use* switches, protocols, and signaling systems that will allow them to obtain the calling party's number from the transmission of ANI. Older analog systems may not have this capability.[7]

Thus, from the outset, the Commission indicated that a wireless carrier's E911 obligations were not triggered until a requesting PSAP actually deployed the infrastructure necessary to utilize the E911 data.

The Commission reiterated this interpretation in its *Second Reconsideration Order*:

- "Carriers also would benefit from *receiving requests from PSAPs that are ready to receive the carrier's transmissions*, thereby avoiding unnecessary expenditures or investments in their networks."[8]
- "Carriers cannot fulfill their obligations, however, unless and until the States' 911 systems *are capable of receiving and utilizing the E911 information so that PSAPs can make a valid request for the service*."[9]
- "We retain the [PSAP cost recovery] provision *to ensure that carriers are not required to make unnecessary expenditures in response to a PSAP that is not ready to use the E911 information*. . . . . Apart from the significant costs involved, because location technologies are evolving and improving

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[7] *First Report*, 11 FCC Rcd. at 18768, 18711 (emphasis added).

[8] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Second Memorandum Opinion and Order*, 14 FCC Rcd. 20850, 20909 (1999) (supplemental final regulatory flexibility analysis), *recon. denied*, 15 FCC Rcd. 22810 (2000), *affirmed sub nom., United States Cellular Corp. v. FCC*, 2001 U.S. App. LEXIS 15395 (D.C. Cir. June 29, 2001) ("*Second Reconsideration Order*") (emphasis added).

[9] *Id.* at 20878 (emphasis added).

> in the sort term and the costs of those technologies are decreasing, the public, the PSAP and the carrier benefit from *a requirement that is not triggered until the actual time at which the PSAP can take advantage of the E911 service.*"[10]

Despite the clarity of the "capability" precondition, the City of Richardson ("Richardson") sought a "clarification" of the rule. It argued that the rule should require wireless carriers to begin Phase II deployment if a PSAP merely requests service and states that it will be ready for the service within six months.[11]

The Wireless Telecommunications Bureau ("Bureau") issued two notices seeking comment on this issue,[12] with the latter *Public Notice* seeking comment on whether the rule needed to be amended to clarify the "capability condition."[13] Neither public notice proposed a substantive rule change, but merely sought comment on the need for clarifying the existing rule. According to the Bureau:

> Based on the language of the rule itself, the Commission's orders addressing the rule and the comments and reply comments of interested parties, it appears that the rule as written may be capable of more than one interpretation. Accordingly, the Bureau seeks additional comment on whether the rule should be amended to clarify its meaning and/or adopt some criteria [for assessing the validity of a PSAP request][14]

Cingular opposed the purported "clarification" as unnecessary and noted that the interpretation sought by Richardson was inconsistent with the Commission's prior definition of

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[10] *Id.*. at 20879 (emphasis added).

[11] City of Richardson Petition for Declaratory Ruling and/or Clarification, CC Docket No. 94-102 (Apr. 5, 2001).

[12] *Wireless Telecommunications Bureau Seeks Comment on Request for Clarification or Declaratory Ruling Concerning Public Safety Answering Point Requests for Phase II Enhanced 911*, CC Docket No. 94-102, *Public Notice*, DA 01-886 (Apr. 5, 2001); *Wireless Telecommunications Bureau Seeks Further Comment on The Commission's Rules Concerning Public Safety Answering Point Requests for Phase II Enhanced 911*, CC Docket No. 94-102, *Public Notice*, DA 01-1623 (July 10, 2001) ("*Public Notice*").

[13] *Public Notice* at 1

[14] *Id.* at 2.

the condition.[15] Cingular and the Rural Cellular Association ("RCA") also noted that Richardson could not obtain its requested relief because the "clarification" would substantively change the rule itself, a task that required notice and comment rulemaking by the agency under the APA.[16]

On October 17, 2001, the Commission adopted the subject *Order* amending Section 20.18(j) of the Commission's rules "to clarify what constitutes a valid Public Safety Answering Point (PSAP) request so as to trigger a wireless carrier's obligation to provide enhanced 911 (E911) service to that PSAP."[17] The Commission retained both the "is capable" language and the underlying purpose of the rule – to prevent wireless carriers from expending resources for E911 implementation before a PSAP is actually able to use the information -- but added "clarifying" language that is inconsistent with and substantively changes Section 20.18(j). Specifically, the new language transforms the "is capable" requirement into a prospective "*may* be able to use" requirement. Specifically, the amended rule states that a PSAP request will be automatically deemed valid and, if challenged by a carrier, the presumption will be upheld if the PSAP:

> can demonstrate that it has ordered the necessary equipment and has commitments from suppliers to have it installed and operational within the six-month period specified in [the rules] and can demonstrate that it has made a timely request to the appropriate local exchange carrier for the necessary trunking and other facilities. In the alternative, a PSAP will be deemed capable of receiving and utilizing the data elements associated with Phase II service if it is Phase I-capable using a Non-Call Path Associated Signaling (NCAS) technology, and if it can demonstrate that it has made a timely request to the appropriate local exchange carrier for

[15] Comments of Cingular Wireless LCC, CC Docket No. 94-102, at ii (July 25, 2001) ("Cingular Comments"); *see* The National Telephone Cooperative Association, CC Docket No. 94-102, at 2-3 (July 25, 2001).

[16] Cingular Comments at 5-9; Comments of RCA, CC Docket No. 94-102, at 2-5 (July 25, 2001).

[17] *Order* at ¶ 1.

> the Automatic Identification Location (ALI) database upgrade necessary to receive the Phase II information.[18]

The Commission specifically indicated that the clarification was necessary to ensure that "wireless carriers are not asked to commit resources needlessly."[19]

DISCUSSION

The amendment to Section 20.18(j) does not simply clarify the old rule. It results in a substantive change. PSAP requests for Phase II service are now deemed valid if *it appears that they will be capable* of utilizing the service within six months. The old rule required actual PSAP deployment of the modifications and equipment necessary to receive and utilize E911 data (not just the ordering of equipment) before a carrier's Phase II obligations were triggered. The Commission's failure to confront this rule and policy change is arbitrary and capricious and violative of both the APA and the FCC's rules.

I. SECTION 20.18(J), AS AMENDED, IS INTERNALLY INCONSISTENT AND DOES NOT ADHERE TO ITS STATED BASIS AND PURPOSE

Section 553(b) of the APA generally requires notice and an opportunity to comment before the promulgation or amendment of an agency rule.[20] The APA requires that a rulemaking notice include, among other things, "either the terms or substance of the proposed rule or a description of the subjects and issues involved."[21] The APA also stipulates that, "after consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose."[22]

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[18] *Id.*, Appendix B.
[19] *Id.* at ¶ 13.
[20] 5 U.S.C. §553(b).
[21] *Id.*
[22] 5 U.S.C. §553(c).

Courts have long recognized that any judicial review of administrative action cannot be meaningfully conducted unless the court is fully informed of the basis for that action.[23] Accordingly, the "basis and purpose" statement required by Section 552(c) of the APA must:

> be sufficiently detailed and informative to allow a searching judicial scrutiny of how and why the regulations were actually adopted. . . . In particular, the statement must advert to administrative determinations of a factual sort to the extent required for a reviewing court to satisfy itself that none of the regulatory provisions were framed in an "arbitrary" or "capricious" manner. [24]

If the announced basis and purpose is inconsistent with the rule, or the rule itself is internally inconsistent, there is no "rational connection between the facts found and the choice made" and the rule is therefore invalid.[25] It is equally well established that if the Commission changes course it must recognize that fact and explain the reason for its departure.[26] None of these principles were followed in the *Order*.

First, the Commission cloaked its action here as a clarification, but none was needed. The original Bureau public notice conjured up an ambiguity even though none existed. The FCC "is capable" language is clear on its face and was explained many times – a PSAP must be able to process E911 information before it can require a carrier to provide Phase II service. This requirement was consistent with the rule's original basis and purpose – to ensure that wireless

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[23] *See, e. g., P.A.M. News Corp. v. Hardin*, 440 F.2d 255, 259 n.6 (D.C. Cir. 1971).

[24] *Amoco Oil Co. v. EPA*, 501 F.2d 722, 739 (D.C. Cir. 1974).

[25] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), *quoting Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962) (vacating rulemaking order based on agency failure to address facts relevant to the rule adopted); *Chemical Mfrs. Ass'n v. EPA*, 28 F.3d 1259, 1267-68 (D.C. Cir. 1994) (vacating portion of rule as inconsistent with stated purpose); *Geller v. FCC*, 610 F.2d 973 (D.C. Cir. 1979); *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752 (6th Cir. 1995); *see National Exchange Carrier Ass'n, Inc.*, ASD 98-96, *Order* 15 FCC Rcd. 1819, ¶6 (1999) (noting that "[u]nder the APA, a substantive rule is invalid if not promulgated in accordance with proper notice and comment requirements").

[26] *See Greater Boston Television Corp. v. FCC*, 44 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

carriers are not required to expend limited resources deploying E911 services until PSAPs are actually ready to use them.

Ironically, the new rule retains the original "is capable" language and basis and purpose, but adds:

> A PSAP will be deemed capable of receiving and utilizing the data elements associated with the service requested if it can demonstrate that it has ordered the necessary equipment and has commitments from suppliers to have it installed and operational within the six-month period specified in [the rules] and can demonstrate that it has made a timely request to the appropriate local exchange carrier for the necessary trunking and other facilities. In the alternative, a PSAP will be deemed capable of receiving and utilizing the data elements associated with Phase II service if it is Phase I-capable using a Non-Call Path Associated Signaling (NCAS) technology, and if it can demonstrate that it has made a timely request to the appropriate local exchange carrier for the Automatic Identification Location (ALI) database upgrade necessary to receive the Phase II information.[27]

This new language makes the rule internally inconsistent. As stated above, this "is capable" condition means that a wireless carrier's Phase II obligation "*is not triggered until <u>the actual time</u> at which the PSAP can take advantage of the E911 service*."[28] "Is capable" does not mean will be capable in the future. Being capable of processing E911 information is different than ordering equipment. This internal inconsistency constitutes reversible error.[29]

According to the Commission, the amended rule was a "logical outgrowth" of this docket where the Commission has addressed "the respective roles that PSAPs and wireless carriers will play in implementing E911 service."[30] Consistent with this objective, the Commission

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[27] *Order*, Appendix B.

[28] *Second Reconsideration Order*, 14 FCC Rcd. at 20879 (emphasis added).

[29] *See Chemical Mfrs.*, 28 F.3d at 1267-68 (vacating inconsistent portion of a rule).

[30] *Order* at ¶ 26. Although unclear, the Commission apparently concludes that public notice of a rule change is unnecessary if the change is tangentially related to proposals submitted

(continued on next page)

determined that the purpose of the clarifying amendment was to "ensure that none of the parties [subject to the E911 rules] expends resources unnecessarily."[31] The Commission emphasized the importance of this objective with respect to wireless carriers in particular.[32] Although the original rule was consistent with this basis and purpose, the clarifying amendment is not.

Although the amendment purportedly is designed to maintain the original protection afforded wireless carriers against the needless expenditure of limited resources to satisfy E911 requests, it effectively changes the rule and eliminates this protection. The original rule provided absolute protection – carriers had no obligation to expend resources until a PSAP was able to use the requested E911 information. Under the new rule, a PSAP request is valid if the PSAP can merely demonstrate that it *may* be capable of utilizing Phase II information in six months.

Requiring a PSAP to establish that it has ordered equipment, however, *does not* establish that the equipment will actually be delivered on schedule. For example, Cingular proposed a Phase II deployment schedule for its GSM networks based on vendor promises to deliver E-OTD handsets prior to October 1, 2001. On the eve of this deadline, Cingular was informed that the handsets would not be available and subsequently was informed that the handsets would not be available for approximately nine months.[33] Thus, despite the best intentions of PSAPs, merely ordering equipment does not guarantee that it will be delivered, let alone successfully deployed, in a timely fashion. Accordingly, the amended rule would be inconsistent with its stated basis because it would require wireless carriers to expend resources to supply Phase II information before knowing whether a PSAP is ready to use it. This is problematic given the limited

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for public comment years before. This interpretation of the APA is inconsistent with precedent. *See Greater Boston*, 44 F.2d at 852.

[31] *Order* at ¶11.

[32] *Id.* at ¶13.

[33] Cingular Petition for Reconsideration, CC Docket No. 94-102, at 4-9 (Nov. 13, 2001).

resources available and is likely to result in a delay in the roll-out of Phase II services because wireless carriers will undoubtedly be concentrating on meeting the demands of certain PSAPs who are unable to use the information.

The only clarification that would have been consistent with the basis for the rule was a statement that, if a PSAP request was challenged, the PSAP must demonstrate that the equipment necessary to utilize Phase II location information had been *delivered and installed* prior to the submission of its request for Phase II service. The failure to consider this alternative was error.[34]

II. THE COMMISSION'S FAILURE TO ISSUE AN NPRM PROPOSING TO CHANGE THE RULE AND PROVIDE A NEW BASIS WAS FATAL

If the Commission determines that its rules should no longer protect wireless carriers from making premature investments in E911 infrastructure that cannot be used by PSAPs, it must directly confront the issue and commence a notice and comment rulemaking proposing this substantive change.[35] As courts have noted:

> When an agency promulgates a legislative regulation by notice and comment directly affecting the conduct of both agency personnel and members of the public, whose meaning the agency announces as clear and definitive to the public, . . . it may not subsequently repudiate that announced meaning and substitute for it a totally different meaning without proceeding through the notice and comment rulemaking normally required for amendments of a rule.[36]

Moreover, the agency must explain the reason for the change and set forth the new basis and purpose for the rule.[37]

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[34] *See Achernar Broad. v. FCC*, 62 F.3d 1441, 1447 (D.C. Cir. 1995); *Office of Communication of the United Church of Christ v. FCC*, 779 F.2d 702, 714 (D.C. Cir. 1985); *Telocator Network of America v. FCC*, 691 F.2d 525, 537 (D.C. Cir. 1982).

[35] 47 U.S.C. § 553(b).

[36] *National Family Planning v. Sullivan*, 979 F.2d 227, 231 (D.C. Cir. 1992).

[37] *See Greater Boston*, 44 F.2d at 852.

The *Public Notice* issued by the Bureau did not, and could not, satisfy these requirements. First, the *Public Notice* indicated that the Bureau was only considering clarifying the rule. It did not propose a substantive rule change, nor did the notice set forth the text of the proposed rule. Thus, interested parties were not provided the required notice of a substantive rule change.

Second, the APA requires the "agency" to issue notices of proposed rule changes and to publish the notice in the Federal Register.[38] This requirement was not satisfied because no notice of proposed rulemaking was issued. The notices issued did not propose a substantive rule change. Moreover, the Bureau, not the Commission, issued the *Public Notice*,[39] and the Commission's rules prohibit the Bureau from acting with respect to notices of proposed rulemaking.[40] This prohibition was modeled after the delegated authority provision for the Common Carrier Bureau, which expressly states that the bureau "shall not have authority to issue notices of proposed rulemaking."[41] Thus, under the APA, a Bureau's public notice indicating that it was merely contemplating a rule clarification is not the same as a notice of proposed rulemaking that seeks comment on a substantive rule change. The failure to comply with these requirements constitutes a violation of the APA and the Commission's rules.

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[38] *See* 5 U.S.C. § 553(b).

[39] The Commission states that the Federal Register publication requirement was properly satisfied because the *Public Notice* appeared in the Federal Register. *Order* at ¶ 24. This conclusion is flawed. As stated below, the *Public Notice* did not propose a substantive rule change, so it could not satisfy the APA notice requirement. Second, there is no legal precedent for the conclusion that publication of a Bureau notice in the Federal Register converts the Bureau document into a document required to be issued by the Commission itself.

[40] 47 C.F.R. § 0.331(d).

[41] *See Amendment of Part 0 of the Commission's Rules to Reflect a Reorganization Establishing the Wireless Telecommunications Bureau and to Make Changes in the Delegated Authority of Other Bureaus*, 10 FCC Rcd. 12751 (1995); 47 C.F.R. § 0.291.

III. SECTION 20.18 SHOULD BE AMENDED TO REQUIRE PSAPS TO DOCUMENT READINESS AT THE TIME OF A PHASE II REQUEST AND TO ESTABLISH AN EXPEDITED DISPUTE RESOLUTION PROCESS

As stated above, an amendment clarifying the "is capable" condition was not necessary. The rule requires PSAPs to be able to use E911 data at the time they request Phase II information from carriers. To expedite Phase II deployment and minimize disputes, however, the Commission should require PSAPs to document readiness at the time a request for Phase II service is submitted and should establish an expedited process for resolving readiness disputes. These clarifications would be consistent with the rule and could be made without notice and comment because they relate solely to FCC practice and procedure.[42]

A. PSAP Request for Phase II Service Should Include a Demonstration of Readiness

To the extent the Commission intended to "clarify" its existing rule to avoid needless disputes over the validity of PSAP E911 requests, the proper course would have been to simply require PSAPs to submit documentation of actual readiness with the request for E911 services (the "Cingular Proposal"). Such a clarifying amendment would have served the underlying purpose behind the rule[43] and would have eliminated more disputes than the amendment actually adopted.

Under the clarification adopted, wireless carriers must challenge a PSAP request for E911 service in order to obtain proof that the PSAP will be ready to use the service within six months and ensure that they will not be expending resources needlessly. In addition to

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[42] The FCC must follow its own rules. *See Way of Life Television Network, Inc. v. FCC*, 593 F.2d 1356, 1359 (D.C. Cir. 1979) (quoting *Union of Concerned Scientists v. Atomic Energy Comm'n*, 499 F.2d 1069, 1082 (D.C. Cir. 1974), *quoted in Florida Inst. of Tech. v. FCC*, 952 F.2d 549, 553 (D.C. Cir. 1992).

[43] *See Achernar*, 62 F.3d at 1447; *United Church of Christ*, 779 F.2d at 714; *Telocator*, 691 F.2d at 537.

fundamentally altering the rule as discussed above, this clarification merely delays the submission of documentation. Carriers will likely be forced to challenge virtually every PSAP request because these challenges are the only vehicle for obtaining the protections intended by the rule. Thus, the new rule effectively requires: (i) a PSAP request for E911 service; (ii) a carrier challenge to the request; and (iii) a PSAP response.

The Cingular Proposal would serve the purpose of the rule by protecting carriers from expending resources until a PSAP is actually ready to use the E911 data. Disputes and paperwork would be minimized. PSAPs would be required to submit a request for Phase II service and documentation that the PSAP has purchased and installed all of the upgrades necessary to utilize the data. This would not increase PSAP paperwork, but merely require the submission of all materials at once. The overall paperwork burden would be lessened because wireless carriers would no longer need to dispute all PSAP requests. Wireless carriers would have the opportunity to verify PSAP readiness claims and would only dispute the validity of PSAP requests where a PSAP failed to establish readiness.

This proposal also will expedite the provision of Phase II service because the number of disputes will be extremely small compared to the disputes that would result from the amended rule. In the majority of cases, wireless carriers therefore would be able to move immediately to Phase II deployment rather than await documentation supporting the PSAP request.

Finally, even if the Commission determines, after the appropriate notice and comment period, that PSAP requests will be valid if they can demonstrate that they will be able to use E911 data within six months of the request, PSAPs should be required to submit the supporting documentation with the request. As discussed above, the current approach actually promotes challenges to PSAP requests, delays Phase II implementation, and does not actually reduce the paperwork burden for PSAPs or the Commission.

B. Commission Should Establish an Expedited Dispute Resolution Process to Resolve "Readiness" Issues

Section 20.18(j), as amended, also fails to establish a process for resolving disputes relating to the validity of PSAP request. The Commission should clarify that a wireless carrier must dispute a PSAP's readiness claim in writing within 14 days of receipt, and that PSAPs have 14 days to respond to the carrier's allegations and supply any documentation necessary to resolve the dispute. If a wireless carrier still refuses to begin Phase II deployment after receiving additional information from the PSAP, the Commission should adopt an expedited procedure whereby the PSAP could challenge the carrier's challenge to the validity of its request. Because of the importance of E911 deployment, prompt Commission action on disputes would be required.

The Commission's rules also should specify that the six-month process for responding to valid PSAP requests be tolled during "readiness" disputes. Otherwise, carriers may be required to expend resources to satisfy an invalid request while the dispute is pending. E911 deployment is time intensive and the full six-month period is often necessary to meet PSAP requests. Thus, absent tolling, a carrier would be required to begin E911 deployment in response to a challenged request simply to ensure that deployment could be timely completed in the event the Commission rejected the challenge. Tolling the period is consistent with the purpose of the rule that carriers be protected from expending resources needlessly and would not delay deployment significantly if the Commission adopted the procedures set forth above.

CONCLUSION

For the foregoing reasons, the Commission should vacate the *Order* and adopt a new Order (i) requiring PSAPs to submit with Phase II requests the documentation necessary to establish the validity of the request; (ii) establishing an expedited process for resolving disputes relating to this documentation; (iii) clarifying that the six month period for responding to a PSAP

CONCLUSION

For the foregoing reasons, the Commission should vacate the *Order* and adopt a new Order (i) requiring PSAPs to submit with Phase II requests the documentation necessary to establish the validity of the request; (ii) establishing an expedited process for resolving disputes relating to this documentation; (iii) clarifying that the six month period for responding to a PSAP request is tolled where the validity of the request is challenged; and (iv) determining whether the Wireless Telecommunications Bureau actually has delegated authority to issue notices of proposed rulemaking.

Respectfully submitted,

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I, Paula Lewis, do hereby certify that on this 3rd day of December 2001, a copy of the foregoing **Petition for Reconsideration** was served by U.S. Mail, first-class postage prepaid to the following:

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